

TEO BEE ANN & ANOR

A

v.

GOH SAY DOCK & ANOR

HIGH COURT MALAYA, MUAR

B

AHMADI ASNAWI J

[CIVIL SUIT NO: 23-18-2007]

10 MAY 2010

LAND LAW: *Indefeasibility of title and interests - Registration - Claim of beneficial ownership and irrevocable licence to occupy part of land - Whether such interests capable of registration under the National Land Code - Whether such interests recognizable under the Torrens System*

C

LANDLORD AND TENANT: *Duration - Lease - Lease over part of land - Whether limited to a maximum of 30 years - Whether such lease determinable by bare notice to quit - Whether lease intended to confer tenants with irrevocable rights to occupy and use part of land in perpetuity - National Land Code, s. 221(3)(b)*

D

LANDLORD AND TENANT: *Lease or licence - Written agreement between parties - Whether agreement intended to establish a tenancy or licence - Whether agreement intended to bind successor-in-title or personal representatives of parties*

E

By an agreement dated 14 June 1963 ('the agreement'), CMY agreed to allow the first defendant's predecessor in title – NHT – and four others construct shop-houses on part of her land. In return, NHT and the four others agreed to construct and give one shop-house to CMY. The agreement provided that NHT and the four others would not pay any rent for occupying part of CMY's land for the first 15 years, *ie*, from 1 July 1963 to 1 July 1978. Thereafter, *ie*, from 1 July 1978 onwards CMY was to receive RM5 per month from NHT and the four others for each of the shop-houses constructed. NHT was allocated shop-house No. 98. This shop-house was eventually sold and ended up in the ownership of the first defendant. The second defendant was the tenant of shop-house No. 98 and paid RM500 rental per month to the first defendant. CMY's land also changed ownership and the plaintiffs became its registered owners. The plaintiffs claimed that the defendants were illegally occupying part of the land and brought the instant action to end

F

G

H

I

- A such occupation. The plaintiffs contended that the tenancy created by the said agreement had been terminated or had since expired statutorily. However the first defendant claimed that NHT and the four others had an irrevocable right or licence to build and occupy the portion of CMY's land as long as they continued to pay the
- B RM5 monthly rentals from the 16th year and gave the CMY her shop-house. The defendants thus counterclaimed for a declaration that they were entitled in law and equity to occupy the portion of land upon which shop-house No. 98 stood as beneficial owners of the land or as licensees under an irrevocable licence conferred by
- C the agreement.

Held (allowing the plaintiffs' action with costs and dismissing the defendants counterclaim with costs):

- D (1) The intention of the parties was clear. They had all along intended the said agreement to create a landlord/tenancy relationship. CMY had never intended to part with the portion of land upon which the shop-houses were constructed for good. She had also no intention to confer NHT and the other four
- E irrevocable rights to occupy and use the portion of land in perpetuity. After 15 years from 14 June 1963, the tenancy of each shop-house became a monthly tenancy that could be ended through the service of a notice to quit. This had been done in the instant case. (paras 11, 12, 14 & 16)
- F (2) The shop-house built and given to CMY by NHT and the four others was not given free of charge. It was built and given to CMY in perpetuity *in lieu* of the rentals not collected from the five tenants during the first 15 years of the tenancy. The uncollected rentals amounted to RM4,500 which was more than
- G what NHT paid to build his own shop-house. Thus there was no equity operating in favour of NHT and the other four in the circumstances. (para 13)
- H (3) Since the relationship between CMY and the five was in the nature of landlord and tenant, there was no reason why the plaintiffs could not rely on s. 221 of the National Land Code in aid of their claim. Since only a portion of the land was subject to tenancy, s. 221(3)(b) was relevant and applicable. The tenancy between the parties entered into by the agreement was
- I thus limited to a maximum term of 30 years. A bare notice to

- quit was sufficient to end the tenancy after the expiry of the 30 year period. In the instant case, the 30 year period had ended a long time ago. (para 18) A
- (4) The agreement did not bind the successors-in-title nor the personal representatives of the parties. It also did not provide for the benefits to flow down to the personal representatives of the five tenants. At the most, the agreement could only confer a 30-year lease of the portion of land to the tenants from 14 June 1963, which licence or tenancy had clearly expired on 15 June 1993. The defendants had also failed to show that there was a proper succession of the equitable right or interest in respect of shop-house No. 98. CMY also not privy to the transactions involving the successors-in-title to NHT. (paras 19-21) B C
- (5) No equity could operate in the first defendant's favour. He did not stay in the shop-house but instead rented out the shop-house for amounts higher than the rentals he himself paid out and which the plaintiffs did not receive after the issuance of the notice of quit. The first defendant took advantage of his position to optimize his personal gain. Any equitable right had already been long satisfied as the first defendant and his predecessors-in-title had occupied the premises for a period longer than the maximum tenure of 30 years allowed under s. 221(3)(b) of the National Land Code. Equity would not assist the first defendant in the instant case. (paras 22-24) D E F
- (6) The defendants' claim of having an irrevocable licence to occupy the portion of land had no legal basis at all. The first defendant had failed to satisfy the applicable test. Whatever licence the first defendant was claiming over the portion of land was void and unenforceable against the subsequent registered land owners of the land whose title was indefeasible. (paras 25-28) G
- (7) The defendants' claim of beneficial ownership with an irrevocable right to occupy the portion of land had no legal basis whatsoever. It was not a registrable interest under the National Land Code. Their claims were totally alien to the Torrens System where the register is everything. The defendants were also not the registered owners of the portion of land, which title would be indefeasible against the rest of the world. (para 31) H I

A Case(s) referred to:

Laksamana Realty Sdn Bhd v. Yeo Tin Sang [1998] 5 CLJ 347 HC (**refd**)
C Paul D' Cruz v. Chow Tai Yow & Sons Sdn Bhd [1998] 4 CLJ Supp
389 HC (**refd**)

SS Saw v. Siew Heen Yuen & Ors; Siew Boon Hong & Ors (Interveners)
[2009] 2 CLJ 140 CA (**refd**)

B

T Damodaran v. Choe Kuan Him [1979] 1 LNS 107 PC (**refd**)

Woo Yew Chee v. Yong Yong Hoo [1978] 1 LNS 240 FC (**refd**)

Yeow Soh Hwa v. Low Lim Chew Poh [2004] 1 LNS 68 HC (**refd**)

Legislation referred to:**C** National Land Code, s. 221(3)(b)

For the plaintiff - Julie Lim; M/s Julie Lim, Vasanthan & Co

For the defendant - M Manian; M/s Manian K Marappan & Co

Reported by Andrew Christopher Simon

D**JUDGMENT****Ahmadi Asnawi J:****E**

[1] Both the plaintiffs are the registered owners of a piece of land known as EMR 7935 Lot 100 (now known as GM 3205 Lot 100) in the Mukim of Seri Medan, Batu Pahat, having purchased the same from its previous land owners Azizah binti A. Majid, Kamsiah binti Ab. Majid and Zalihah binti Ab. Majid for the sum of

F

RM300,000. Meanwhile the said previous landowners inherited the said land from their late mother one Che Manis bte Yusuf. Though the 1st defendant's predecessor-in-title was allowed by the said Che Manis bte Yusof to put up a wooden structure (shop house) on a

G

portion of the said land and occupy the same by a written agreement, the plaintiffs is now contending that the defendants are in illegal occupation of that portion of the said land and by this suit sought to end their occupation on the said portion grounded upon the premise that the tenancy created by the said agreement has been terminated or had since expired statutorily.

H

[2] However, the defendants contended that by the said written agreement (dated 14 June 1963, at p. 1 of encl. 14) (hereinafter referred to as the "said agreement") the said Che Manis bte Yusof had granted/allowed part of her land comprising an area of 60 feet by 200 feet to be used as the site for the construction of six

I

wooden shop houses to the 1st defendant's predecessor in title (Ng Hor Tee) and four others (Ng Hoo Teck, Ng Soh, Ten Siew Lian and Tan Leng). In return Ng Hor Tee and the four others agreed to construct and give in perpetuity one wooden shop house to the said Che Manis bte Yusof.

A

[3] It is also provided in the said agreement that the said five persons were not to pay any rentals for the occupation of the said portion of land for the first 15 years ie, from 1 July 1963 to 1 July 1978. Thereafter from 1 July 1978, the landowner shall receive rentals of RM5 per month from each of the five persons for each of six shop houses erected on the portion of the said land.

B

C

[4] The 1st defendant's predecessor-in-title (Ng Hor Tee) was allocated shop house No. 98, one of the six shop houses built in 1963. Later he sold it to Kassim b. Jaafar. On 2 November 1971, Kassim b. Jaafar sold the said shop house to Tee Han. Subsequently on 9 May 1977 Tee Han sold the said shop house to Goo Yee, the first defendant's late father. Goo Yee subsequently died in February 2000. The first defendant is now claiming that he is the successor-in-title of the said shop house No. 98. The second defendant is a tenant occupying the said shop house paying about RM500 per month in rental to the first defendant.

D

E

[5] It is now the contention of the first defendant that under the said agreement, the first defendant's predecessor-in-title (Ng Hor Tee) and the four others were promised or given an irrevocable right or licence to build on and occupy the relevant site for as long as they continue paying rentals from the 16th year onwards and gave her the shop house. The plaintiff's predecessor-in-title (Che Manis bte Yusof) was estopped from denying that the first defendant's predecessor-in-title and the four others had a permanent right to use the land as promised as long as they continue paying the RM5 rental per month each over the said portion of land.

F

G

[6] Henceforth the defendants mounted a counter-claim *inter alia* claiming the portion of land allegedly belonging to them ie, the portion where shop house No. 98 is sited and seeking a declaration that they are entitled in law and in equity to occupy that said portion of land as beneficial owners of the said land or otherwise as a licensee under an irrevocable licence conferred by the said agreement.

H

I

A Issue For Determination

[7] The issue for determination before me as agreed by the parties is:

- B** whether or not the first defendant has irrevocable license over that portion of Lot 100 on which the building/structure No. 98, Seri Medan Batu Pahat, stands based on the agreement dated 14 June 1963 and on the first defendant's ownership of such building.

C The Relationship Between The Parties As Conferred By The Said Agreement

- D** [8] Learned counsel for the defendants' main contention is that the right conferred to Ng Hor Tee and the four others could not have been a mere monthly tenancy as submitted by learned counsel for the plaintiffs as they have expended a total sum of RM19,200 to erect six shop houses under the said agreement (see agreement at p. 2 of encl. 14). Ng Hor Tee's share is RM3,840. These sums were indeed large amount of monies in those days.

- E** [9] In such event if Che Manis bte Yusof were to terminate the tenancy after the 16th year, then she would have received RM19,200 for 15 years of land use, RM14,700 more than the rental (RM4,500) she would have received in the first 15 years (RM5 per month x 12 months x 5 shop houses x 15 years = RM4,500). Similarly Ng Hor
- F** Tee would not have paid RM3,840 for 15 years' of land use as the rental he would have had to pay for 15 years would have only been RM900. He could have bought more than 10 acres of land with RM3,840 in 1963.

- G** [10] Learned counsel for the defendants' further submitted that the true intention of the parties properly construed from the said agreement, must have been that Ng Hor Tee and the four others were given permanent or irrevocable right to use the portion of the said land as long as they continue paying the rentals from year 16.
- H** The term 'sewa' in the said agreement was a misnomer for the nature of the right granted was not a tenancy right but a permanent or irrevocable right as the tenancy here have no certain ending. Thus in truth it is actually an annuity and not rental.

I

[11] However, on these issues I am not with learned counsel for the defendants. The intention of the parties *vide* the said agreement is crystal clear. In my view what was intended all along by all the parties to the said agreement is to create a landlord/tenancy relationship. For purposes of clarity the relevant terms (para 3) of the said agreement is reproduced below:

kedua-dua pihak bersetuju berkenaan sewa menyewa bagi 6 buah rumah itu tidak dijalankan selama 15 tahun dimulai dari 1.7.1963 hingga 1.7.1978, dan selepas tempoh 15 tahun, barulah pihak pertama sebagai tuan punya tanah boleh menerima sewa-sewa pada tiap-tiap satu pintu pihak rumah itu tidak lebih dan tidak kurang dari RM 5.00 (lima ringgit) pada tiap-tiap satu bulan

[12] It is apparent that the said agreement specifically referred to the “sewa menyewa bagi enam buah rumah itu ...” There can be no other connotation. The collection of the said rentals from the tenants very clearly were suspended for a period of 15 years from 14 June 1963 and on the 16th year (effective from 1 July 1978) the landowner would be entitled to collect the monthly rental from each of the six houses at the rate of RM5 per month. Again there can be no other meaning or construction attached to the clear wordings of the said terms. It would be a great injustice to construct the meaning otherwise.

[13] It is equally obvious that the house built and given to Che Manis bte Yusof by Ng Hor Tee and the four others was not given free of charge. It was built and given to Che Manis bte Yusof in perpetuity *in lieu* of the rentals not collected from the five tenants during the first 15 years of the tenancy. The uncollected rentals for the first 15 years of the tenancy amounting to RM4,500 were obviously the cost of building the shop house given to her. The said cumulative rental sum (RM4,500) uncollected from the said five tenants throughout the said first 15 years is consistent with the amount Ng Hor Tee expended to have his unit of shop house which was only RM3,840. Indeed Che Manis bte Yusof was gratuitous on the extreme side or was otherwise short changed by her five tenants. She paid more for the shop house compared with what was paid by Ng Hor Tee. Hence there is no equity operating in favour of Ng Hor Tee and the four other persons under the circumstances. The deal was likewise fair and square.

A [14] It was never her intention to part with the said portion of
land for good. Neither was it her intention to confer the five
persons with an irrevocable right to occupy and use the said portion
B payable to Che Manis bte Yusof though a pittance by today's
standards, provides the demarcation line of the relationship the
parties wanted to enter and be bound with. As such there is no
misnomer in the use of the term "sewa-menyewa". It was very
much intended to be as such by the parties thereto. Equally by no
C stretch of the imagination could the same be equated with an
annuity payment.

[15] Learned counsel for the defendants' submission that the
RM19,200 expended by the five persons to erect the six shop
D houses could buy about 100 acres of agricultural land at that
material time, in my view is a mere conjecture. Equally is learned
counsel's submission that Ng Hor Tee could have purchased about
10 acres of land with RM3,840 back then. There is no evidence to
support such contention. At best it is only a matter of hind sight
E on the part of learned counsel. Such thoughts as the evidence goes,
were never in the minds of Ng Hor Tee or the four other tenants.
There were many factors unknown to us why the five persons would
want to enter into such a relationship with Che Manis bte Yusof
on that particular piece of land instead of buying hundreds of acres
F of land elsewhere with the kind of money they used to build the six
shop houses. Hence in my view learned counsel's frolic onto this
issue is wholly irrelevant. It cannot be employed to gauge the
intention of the parties therein.

G [16] For all the reasons enumerated above it is thus my firm
findings that the said agreement clearly envisages a landlord and
tenant relationship between the landowner (Che Manis bte Yusof)
and the five other persons/tenants, Ng Hor Tee included. After 15
years from 14 June 1963, Che Manis bte Yusof is given the right
to collect monthly rental of RM5 only from the five tenants every
H month for each of the houses erected on the portion of the said
land and occupied by them. The cumulative effect and meaning of
this clause is simply that after 15 years the tenancy of each of the
six houses erected thereon becomes nothing more than a monthly
I tenancy.

Such tenancy could be ended through the service of a prior written one full month's notice to quit on the respective tenants. I am satisfied that this was accordingly done. A

Tenure Of The Said Tenancy

[17] It is not the law here that there must be a certain ending in a tenancy thus created. In this country statute would have taken care of that. Section 221 of the National Land Code 1965, is relevant. It provides: B

(1) Subject to the provisions of section 225 and 226, the proprietor of any alienated land grant leases of the whole or any part thereof in accordance with the following provisions of this section. C

(2) Every lease granted pursuant to this section shall be for a term exceeding 3 years. D

(3) The maximum term for which any lease may be so granted shall be:

(a) ninety-nine years if it relates to the whole of any alienated land, and E

(b) thirty years if it relates to a part only thereof.

(4) Every such lease shall be granted by an instrument in Form 15A; and in any case where the lease relates to a part only of any alienated land, there shall be attached to the instrument a plan and description sufficient to enable the part to be accurately identified. F

[18] Having found that the relationship entered between Che Manis bte Yusof and the said five persons was in the nature of landlord and tenant, I see no reason why the plaintiffs cannot rely on this statutory provision in aid of their claim. Since only a portion of the said land was subjected to the tenancy, s. 221(3)(b) is thus relevant and obviously applicable. Hence the tenancy entered between the parties *vide* the said agreement is limited to a maximum term of thirty years only. A bare notice to quit is sufficient to end this tenancy after the expiry of the 30 year period – see *Laksamana Realty Sdn Bhd v. Yeo Tin Sang* [1998] 5 CLJ 347. In this case before me this 30 year period has ended a long time ago. G
H
I

A Binding Effect Of The Said Agreement

[19] Additionally I am in full agreement with the submissions of learned counsel for the plaintiffs that the said agreement does not contain any clause to bind the successors-in-title nor the personal representatives of both parties to the agreement, in particular the five tenants. It also does not provide for the benefits to flow down to the personal representatives of the said five tenants. The said agreement merely provides that "... waris-waris pihak yang pertama (yang punya tanah) apabila mengambil kuasa di atas tanah, hendaklah mesti mengikut perjanjian asal yang telah dibuat oleh pihak yang pertama ...". This obligation of course is confined to the period during the pendency of the said tenancy. It is silent as regards to the position of the five tenants or their successors-in-title or their personal representatives in such event. Hence in my view at most the said agreement can only confer a 30 year lease of the said portion of land to the five tenants from 14 June 1963 (date of execution of said agreement) pursuant to s. 221(3)(b) of the National Land Code 1965. In the event very clearly the licence or tenancy as claimed by the defendants had expired on 15 June 1993.

[20] In any event the defendants have failed to show that there was a proper succession of the equitable right or interest in respect of the shop house No. 98 flowing from the plaintiffs predecessor-in-title (Che Manis bte Yusof) to Kassim bin Jaafar to Tee Han, to Goo Ye and finally to the 1st defendant. No grant of representation was adduced to indicate the transmissions of such equitable rights or interest. Additionally Che Manis bte Yusof were not privy to the transactions involving the so call successors-in-title to Ng Hor Tee and no notice of any assignment of the Bill of Sale dated 2 November 1971 (at p. 3 of encl. 14) and of the agreement dated 27 April 1977 (at p. 5 of encl. 14) made between Tee Han and Goh Yee were given to Che Manis bte Yusof, the registered proprietor of the said land or to her successors-in-title. The factual evidence also indicated that Goo Yee, Tee Han and Kassim bin Jaafar were never the registered owner of the said portion of the land, thus preventing the 1st defendant from acquiring any title or interest in that portion of the said land.

I

[21] The cumulative effect of these transmissions is this: these transmissions do not bind Che Manis bte Yusof as the registered owner of the land and does not also alter the character, purport and intent of the said agreement whereby a tenancy was created to govern their relationship over that portion of the said land.

First Defendant's Equitable Right

[22] On the facts and law no equity can operate in favour of the first defendant. He stayed elsewhere and had the said shop house rented to the second defendant in or about 2005 at RM500 per month, a rate far in excess of the original measly rentals he paid and to which the present plaintiffs received no rentals subsequent to the issuance of the notice to quit. He took advantage of his position to optimise his gain. It is unjust and inequitable to condone the conduct of the first defendant. Equally he could not claim to be a tenant since he was not a tenant who stayed at the shop house – see *SS Saw v. Siew Heen Yuen & Ors; Siew Boon Hong & Ors (Interveners)* [2009] 2 CLJ 140; *Yeow Soh Hwa v. Low Lim Chew Poh* [2004] 1 LNS 68; *C Paul D' Cruz v. Chow Tai Yow & Sons Sdn Bhd.* [1998] 4 CLJ Supp 389.

[23] In this regard I am with learned counsel for the plaintiffs' submissions that if at all there is any equitable right as claimed by the first defendant to occupy that portion of the said land *vide* tenancy coupled with equity flowing from the said agreement, then that equity has already been long satisfied as the first defendant and his predecessors-in-title had occupied the premises on that portion of the land for a period longer than the maximum tenure of 30 years allowed under s. 221(3)(b) of the National Land Code, calculated from the date of the execution of the said agreement. Additionally the first defendant had abused the system for his personal gain to warrant the shutting of the equitable doors to him – see *Yeow Soh Hwa v. Low Lim Chew Poh (supra)*; *Laksamana Realty Sdn Bhd v. Yeo Tin Sang (supra)* and *SS Saw v. Siew Heen Yuen & Ors (supra)*.

[24] Additionally no evidence was produced by the first defendant to show payments of rent after 1998 nor of any tender of payment of rent after 1998. Here I am also in agreement with learned counsel for the plaintiffs that the three receipts produced by the first defendant shown at p. 8 and 9 of encl. 14 appear dubious as the

- A person who issued them is unknown. Equally the two receipts at p. 9 dated 26 February 1998 and 24 December 1998 merely showed payment of rent of RM130 without reference of the period for which the RM130 was made payable. If it was for a 12 month period, then the monthly rent would amount to RM10.833 per month. Again in such event the principles of equity are of no assistance to him.

The Defendants' Claim To Have An Irrevocable Licence To Occupy The Said Portion Of Land

- C [25] In such event as enumerated in the preceding paragraph, in my view, the defendants' claim of having an irrevocable licence to occupy the said portion of the land has no legal basis at all. Even on the facts it must also fail.

- D [26] As my findings in respect of the said agreement is the creation of landlord and tenant relationship between the landowner (Che Manis bte Yusof) and the five tenants including Ng Hor Tee, it is superfluous and indeed unnecessary for me to delve into the issue of whether the said agreement conferred upon them an irrevocable licence to occupy that portion of the land in perpetuity.
- E In any event the first defendant had failed to satisfy the test applicable to define the nature of his alleged right as a licensee over the said portion of the land as laid down by the Federal Court in *Woo Yew Chee v. Yong Yong Hoo* [1978] 1 LNS 240; [1979] 1 MLJ 131. At p. 133, Raja Azlan Shah AG CJ (Malaya) (as His Royal Highness then was) stated:

- G I now turn to the crux of the matter: was the transaction a licence or tenancy? What is the test to be applied? It is now well known that the law will always look beyond the terminology of the agreement to the actual facts of the situation. ... It is no longer a question of words, but substance. It is no longer a question of whether the occupation is permanent or temporary. All these are factors which may be relevant in arriving at a decision whether a particular transaction is a licence or a tenancy but none of them is conclusive. The ultimate test is the nature and quality of occupancy:
- H whether it is intended that the occupier should have a stake in the premises sub lot or whether he should have only a personal privilege.

I

[27] On the facts I am satisfied that the first defendant has not discharged the onus of the deeds he has done or the valuable consideration he has contributed to the plaintiffs or the plaintiffs predecessors-in-title, Che Manis bte Yusof and her three daughters, to earn that personal privilege to occupy that portion of the land irrevocably. His total reliance on Ng Hor Tee's right of occupation of the said portion of the land where the shop house is sited emanating from the said agreement is insufficient for the purpose of establishing his licence over his continued occupation of the same.

A

B

[28] It is trite that a licence does not create any interest and is not an interest in land. It is only a personal obligation and would not be enforceable against third parties. It is equally worthy to note that the said agreement is not registered against the title deed of the said land in the relevant Land Office. As such whatever licence the first defendant is claiming over the said portion of the land is void and unenforceable against the subsequent registered land owners of the said land whose title is indefeasible save for those cases where there has been fraud, misrepresentation, forgery or an *ultra vires* acquisition purporting to have been made under statutory authority.

C

D

E

The Defendants Claim As Beneficial Owners With An Irrevocable Right To Occupy The Said Portion Of Land

[29] Firstly, such contention as above very apparently is inconsistent with their statement of defence in particular para 2(iii) wherein the defendants agreed that the rentals for the five houses will not be collected for 16 years effective from 1 July 1963 to 1 July 1978 and after 1 July 1978 the landowner shall receive rentals of not more and not less than RM5 each month from each of the five houses erected thereon. This is clearly an admission by the defendants that there exists a landlord and tenant relationship emanating from the said agreement. Hence the defendants cannot be allowed to probate and reprobate in the same breath.

F

G

[30] Secondly, the defendants provided no evidence and did not state where their claim as beneficial owners with an irrevocable right to occupy the said portion of the land was derived from. Certainly it could not have flowed from the said agreement as the said agreement on a plain and literal interpretation only conferred tenancy rights to their predecessors-in-title. The evidence adduced

H

I

A as enumerated in the earlier paragraphs did not also support their
contention of the creation of beneficial ownership with an irrevocable
right to occupy the said portion of the land.

B [31] Finally, in my view the defendants' claim or contention is
totally alien in our Torrens System whereby the register is
everything. Nothing can be registered the registration of which is
not expressly authorized by statute and if it is capable of being
registered, the registration gives an indefeasible title to the land or
interest in the absence of fraud – see *T. Damodaran v. Choe Kuan*
C *Him* [1979] 1 LNS 107. Such claim by the defendants has no legal
basis at all. The National Land Code which governs the land law
in our country makes no mention of interest in land under the
guise of irrevocable right in the land or beneficial ownership with an
irrevocable right to occupy the land in perpetuity. The only interest
D in land capable of recognition and registration are leases, charges
and easements. The defendants claim did not come under either of
these interests. Neither were the defendants the registered owners of
the said portion of land whose title would be indefeasible
against the rest of the world. The defendants' claim/contention truly
E misconceived, beyond the scope of our law. Equally it has no basis
in equity either as the equity has been satisfied long ago or
extinguished. More importantly the defendants did not come to
court with clean hands.

F **Order**

[32] For all the reasons given I would thus allow the plaintiffs' claim as follows:

- G 1. (i) that the first defendant do deliver up vacant possession of
that portion of land of Lot 100 where shop house No. 98
stands to the plaintiffs within 30 days from the order
handed down by this court;
- H (ii) the first defendant do pay the plaintiffs special damages for
the unlawful occupation of the said portion of the land at
the mesne profits to be assessed by the Timbalan Pendaftar
from the expiry of the notice to quit dated 17 June 2000
till the date of delivery up to vacant possession of the said
portion of land;

I

- (iii) interest at the rate of 8% per annum on the judgment sum in (ii) above from 31 October 2005 till date of full realisation; and
- (iv) costs to the plaintiffs assessed at RM5,000 only.
2. Conversely on the same grounds, the defendants' counter-claim is dismissed with costs, assessed cumulatively with 1(iv) above.

A

B

C

D

E

F

G

H

I